

# Exhibit J #02

Summary of  
The Michael Stefani Deposition

## **Deposition of: Michael Stefani**

January 30, 2008, 1:00 p.m.

### **Summary of Deposition in Narrative Format**

*Note: The following summary of Michael Stefani's deposition testimony is told in narrative form and is organized according to category in roughly chronological order based on the sequence of real life events as opposed to the sequence in which Stefani discussed these events during the deposition.*

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### **BASIC TIMELINE OF EVENTS:**

- 1) **Background**
- 2) **Whistleblowers trial and subpoenas to SkyTel**
- 3) **Brown and Nelthrope Jury Trial**
- 4) **Facilitation**
- 5) **Stefani's Motion for Additional Attorney's Fees**
- 6) **The City Decides to Negotiate a Global Settlement**
- 7) **Settlement 1**
- 8) **Settlement 2, the Separate Confidentiality and Escrow Agreements**

- 9) **Putting the Settlement on the Record and the Post-Trial Visit to Judge Callahan's Chambers**
- 10) **Mayor's designation of representative to receive records under the confidentiality agreement**
- 11) **Turning over the confidential documents and the escrow account**
- 12) **The Free Press FOIA request**

### **BACKGROUND**

Harold Nelthrope, detective in the Detroit Police Department's Executive Protection Unit and Gary Brown, deputy chief of the Detroit Police Department's Professional Accountability Bureau, brought an action on June 2, 2003 against Detroit mayor Kwame Kilpatrick and the city, alleging slander and violations of the Whistleblowers' Protection Act (WPA). Attorney Michael Stefani represented both officers in this action. The case ended on September 11, 2007 with a jury verdict for the plaintiffs of 6.5 million dollars. Michael Stefani also represented Detroit police officer Walter Harris in a similar but separate suit against Mayor Kilpatrick and the City of Detroit claiming retaliation under the WPA. The three officers sued Mayor Kilpatrick in his capacity as mayor of Detroit and not as a private individual. The two cases ended in a combined 8.4 million dollar settlement in October 2007.

### **WHISTLEBLOWERS TRIAL AND SUBPOENAS TO SKYTEL**

(Pages 116-117, 154-166, 179-190)

Stefani sent a subpoena to SkyTel in September or October of 2004. Stefani asked for text messages to and from Christine Beatty's pager for the period of September 1, 2002, through October 31, 2005 and for the period of April 1, 2003, through May 31,

2003. Stefani wanted the text messages because the officers reported seeing Beatty and Kilpatrick texting, although they did not know to whom. He made the subpoena narrow to avoid having it challenged as burdensome, thinking he could send out more subpoenas later, if necessary. He limited his subpoenas to those dates because he believed that if there was anything to find it would be during those two time periods. The first two months were chosen because, when Walter Harris accompanied the mayor out of town in September, the Mayor didn't allow Harris to make his usual security check of the hotel room. When the Mayor opened the door to his hotel room, Harris saw Christine Beatty sitting, clothed, on the bed. Also, the Manoogian Mansion party was supposed to have taken place in September. He chose the April to May period because Nelthrope reported the misconduct by the security people Jones and Martin to Internal Affairs during this time. Beatty and the Mayor have always said Nelthrope's termination had nothing to do with this report, claiming, rather, his termination was the result of an anonymous letter slid under Beatty's office door. Stefani wanted to determine if their text messages discussed Brown's termination prior to the date of the anonymous letter. The text messages confirmed that the Mayor and Beatty had decided to fire Brown, his inspectors and commander before the letter was slid under Beatty's door.

Stefani did not have the text messages during trial. The trial ended on September 11, 2007 and he did not obtain the text messages until October 4 or 5, 2007. Originally, Stefani requested the text messages in September or October 2004. The City responded with an emergency motion to quash the subpoena. At the hearing, the Judge Callahan ruled for Stefani. He sent out a second subpoena and the City filed a second emergency motion to quash. At the second motion, the City argued that there was a government



privilege protecting the messages. Stefani recalls Judge Callahan laughing at this argument, saying the city better have a better argument. Judge Callahan ordered the messages be sent to him and he would determine whether or not they were privileged. Thus the second subpoena was sent to SkyTel directing SkyTel to send the messages directly to the Judge Callahan. Over the next three years, Stefani assumed Judge Callahan had the messages. At the trial, Stefani cross-examined Beatty, asking her specific questions about text messages, such as: Did she ever send a romantic message to the mayor; Did she ever send a sexually explicit message to the mayor; Did she ever discuss Gary Brown in a text message and; Did she ever discuss the release of Nelthrope's name? Beatty answered all these questions in the negative. Following Beatty's testimony, Stefani asked Judge Callahan to review the text messages and determine if there was anything contradictory in them. The Judge said he didn't have the text messages and thought Stefani had them. Stefani believing the Judge had them, he realized nobody possessed the text messages. After the trial, the Judge told Stefani to re-subpoena the messages. When he did, SkyTel told Stefani, that the text messages were no longer available because of corporate reorganization. Stefani contacted the person he had sent the subpoena to three years earlier, who informed him the messages were still available, but people did not know how to find them. Stefani's contact instructed him on whom to contact and what to ask for.

Stefani sent out a new subpoena and asked why his old subpoena had never been fulfilled. The contact, a previous SkyTel employee, who cannot recall by name, said the request was never fulfilled because the city of Detroit had called Skytel, said they were filing a motion to quash this subpoena, and Skytel should wait on sending anything until

the Judge ruled. The City, in fact, did file a third motion to quash days after the Judge ordered the records sent to him. Someone, however, called SkyTel but never filed the motion for a hearing, although they probably did serve the motion on Stefani. No hearing was held on the third motion to suppress and both Stefani and Judge Callahan were unaware of the third motion for three years. Stefani finally received the messages on October 5 or 6, 2007, arriving with a cover letter, a printout of the details about Beatty's account, and a CD with all the text messages. There were about 210 to 220 pages of text messages when printed in small type and single-spaced. Stefani is unable to say how many messages in total there were.

Stefani still wanted the text messages after trial ended for preparation of post trial motions. He knew there would be post trial motions when the Mayor said he was "blown away" by the results and blamed the jury make-up. Stefani expected motions for new trial, directed verdict, and verdict JNOV. Stefani felt he and the jury had been tricked when the city told SkyTel not to honor the subpoena until the Judge ruled and never bringing the motion up for hearing.

No court order specifically directed the text messages be sent to Stefani's office, so he had them sent there because this is his normal procedure for discovery requests. Also, because of the trouble he had getting his early subpoena requests filled, he wanted to make sure he knew for sure when they arrived. He wanted to avoid any trickery and confusion that might result if he had them sent to the Judge Callahan.

**BROWN AND NELTHROPE JURY TRIAL**  
(Pages 150-158)



Brown and Nelthrope's whistleblower suit went to trial in Wayne County Circuit Court in front of Judge Callahan. During the course of the trial, both Mayor Kilpatrick and Beatty testified under oath. Stefani asked both questions regarding Brown's termination, the disclosure of Nelthrope's name to the media in connection with Brown's termination, and a romantic and/or sexual relationship between the Mayor and Beatty. Stefani says, that, based on text messages, it is clear that the Mayor and Beatty perjured themselves when they denied having had a sexual relationship and explaining the motivations leading to Brown's termination.

**FACILITATION**  
(Pages 39-41, 118-119)

The trial concluded on September 11, 2007, with the jury rendering a \$6.5 million verdict for Brown and Nelthrope. The parties were then instructed by Judge Callahan to negotiate and amount for attorney's fees. The parties met with a facilitator at Charfoos and Charfoos on October 17, 2007. Representing the City and Mayor were Valerie Colbert-Osamuede, James McCargo, Wilson Copeland, and two other younger attorneys. The facilitation was conducted with the opposing sides in separate rooms, communicating through facilitator. Prior to the facilitation the parties never discussed entering into a global settlement. Stefani was interested in global settlement, but, when he raised the issue, the facilitator informed him the defendants were not willing to negotiate a global settlement because they were unsure about their appellate options. The parties spent approximately three hours negotiating attorney's fees before coming to an impasse. Stefani agreed to accept \$475,000 - \$500,000 for attorney's fees if the defendants would

agree to a global settlement in all matters related to the case. Again, defendants declined to negotiate a global settlement.

**STEFANI'S MOTION FOR ADDITIONAL ATTORNEY'S FEES**

(Pages 82-83, 124-130, 174-175)

Once the parties reached this impasse, Stefani and his clients planned to leave. Before leaving, Stefani handed the facilitator a sealed envelope containing a motion for supplemental attorney's fees. Stefani told the facilitator not to read it but to give it Mr. McCargo and only Mr. McCargo. Stefani specified McCargo because he was the lead defense attorney during the facilitation. Stefani told the facilitator that the motion contained extensive excerpts from sexually explicit text messages between the Mayor and Beatty. Stefani told the facilitator the motion contained irrefutable proof that the Mayor and Beatty had perjured themselves during the trial. The facilitator warned Stefani about appearing to threaten or blackmail the defendants into a global settlement. Stefani denied this was his purpose and simply instructed the facilitator to give McCargo the motion. Stefani did not want the facilitator to see the contents of the envelope nor did the facilitator did not want to know its contents. The facilitator delivered the motion to McCargo, who spent approximately 45 minutes reading it. When McCargo finished, he sent the facilitator for Stefani. The facilitator informed Stefani that McCargo wanted to meet with him outside the building in order to discuss the motion privately. Stefani found McCargo in the parking lot where Stefani went to meet him. McCargo looked ashen or shaken up. McCargo told Stefani he had no idea. Stefani was not sure if he meant he had no idea that the text messages existed or that he had no idea Stefani had gained access to the text messages. McCargo asked if he had filed the motion, and Stefani answered that



he had not, but he that he planned to on the following day. McCargo then asked Stefani if he could have some time. Stefani agreed and went back inside.

### **THE CITY DECIDES TO NEGOTIATE A GLOBAL SETTLEMENT**

(Pages 82-86, 96-100, 124-130)

Minutes after their meeting in the parking lot, McCargo sent for Stefani. McCargo told Stefani that, luckily, he had gotten in touch with the Mayor while the Mayor was at the airport. McCargo also indicated that John Johnson, head of the city's legal department, was on his way to the facilitation and that the City was now willing to negotiate a global settlement. Stefani met Johnson when he arrived finding him friendly and agreeable. After Johnson's arrival, the parties seriously negotiated about a global solution. By late afternoon, the parties had reached agreement on 99% of the terms. Stefani wrote the terms out on a yellow legal pad. The parties had an oral agreement to resolve all of the terms. At 4:15, the facilitator had to leave, and Colbert-Osamuede, Copeland, and McCargo agreed, at Stefani's suggestion, that everyone travel to Stefani's office where they could negotiate any additional details and reduce the entire agreement to writing.

### **SETTLEMENT 1**

(Pages 43-45, 57-76, 131-132, 170-173)

By late evening, the parties had reduced their full agreement to writing and produced a document that reflected this agreement. Copeland, Osamuede and McCargo left Stefani's office around 8:15 and Stefani left at about 8:30. The City's attorneys were fully involved in negotiating the terms of the settlement agreement and everybody signed

the document. (This is exhibit 11 and is referred to as the original or tentative settlement agreement.) The total settlement amount for Brown, Nelthrope and Harris was \$8.4 million. Broken down, \$7.9 million went for the Brown and Nelthrope for jury verdict plus interest, \$100,000 was for attorney's fees, and \$400,000 went to Harris. This was the only money received by plaintiffs from the City. The judgment was joint and several, and plaintiffs had the right to collect from Mayor Kilpatrick as well as the city. However, Stefani assumes the payment was all city money, because all the checks received were City of Detroit checks. It appears that nothing came from Mayor Kilpatrick's account. Sometimes, Stefani questions the decision to settle for this amount believing he could have held out for more. Stefani believes he could probably have obtained closer to \$12 million, in light of the damning nature of the text messages.

The first settlement document included a confidentiality provision that referred to the Beatty/Kilpatrick text messages. The text messages, referred to as the "K/B records" directed that they be kept confidential. The first settlement further stipulated that all records pertaining to the financing of Christine Beatty's home and certain documents containing information regarding the officers also be kept confidential. Since Ms. Osamuede signed the original settlement agreement, Stefani assumes that she knew of the existence of the text messages but he does not believe she knew the content of those messages.

On October 27, 2007, Mayor Kilpatrick formally rejected the first settlement (exhibit 10). Stefani believes that the settlement was rejected because the Detroit Free Press filed a FOIA request for the settlement documents on October 19, 2007. Stefani believes a city official realized they would not want to disclose a settlement agreement



that referenced the text messages between Beatty and the Mayor and referenced the financing for Beatty's home. The City recognized that they would need to execute a settlement agreement and a separate confidentiality agreement. So the Mayor exercised his the right to reject the first settlement. The settlement was, essentially, a binding contract with a condition precedent that the Mayor and City Council must agree to it. If the Mayor or City Council rejected the settlement, it would become null and void. Thus when the mayor rejected the first settlement agreement, it did, in fact, become null and void. Stefani does not know whether the city was ever advised that the first settlement agreement existed.

**Settlement 2, the Separate Confidentiality and Escrow Agreements**

**SETTLEMENT 2, THE SEPARATE CONFIDENTIALITY AND ESCROW  
AGREEMENTS**

(Pages 57-58, 77-95, 131-132, 147-148, 174-178, 191-193)

The first settlement agreement was scrapped, according to Stefani, because of the reference to confidential documents that the City and the Mayor did not want the Free Press to know about. Thereafter, a second settlement agreement, exhibit 12, was executed, signed by plaintiffs, their counsel, and by defendants and counsel. No mention is made within this second settlement agreement to the K/B records or to the financing of Christine Beatty's home.

In addition to the settlement agreement, the parties executed a separate confidentiality agreement, exhibit 13, effective November 01, 2007. The confidentiality agreement was intended to incorporate the confidentiality provisions of the first settlement agreement and protect against the release of certain documents the plaintiffs wanted returned, the text messages, and any information about the financing of Beatty's



home. The Plaintiffs, Stefani, Kilpatrick, Beatty and defendants' attorneys signed the confidentiality agreement. Stefani does not know whose idea the confidentiality agreement was but he knows it was not his idea. It was presented to him for signature on December 05, 2007, when the parties had a closing of the documents at Wilson Copeland's office. Present at that closing were Osamuede, Copeland and McCargo. Stefani does not know if Osamuede or Copeland were aware of the confidentiality agreement but they were at the closing meeting where Stefani signed this document. Because several people from Stefani's office reviewed the extensive text messages, the City required Stefani's employees to sign a confidentiality agreement.

Christine Beatty, individually and personally, and Kwame Kilpatrick, individually and personally, were named as parties to the confidentiality agreement, and both signed it. Stefani does not know whether Beatty consulted with an attorney regarding the agreement, but knows that Mayer Morganroth is now representing Beatty. This angers Stefani because Morganroth made a statement to the media saying the case would be appealed and the plaintiffs would probably settle for \$3 million. Stefani does not think these statements about the settlement were appropriate in light of the fact that Morganroth is now representing Beatty. Stefani believes Beatty was interested in keeping the text messages confidential because they were all messages sent to or from her pager and, thus, she had a vested interest in keeping them private.

McCargo told Stefani that, in order for the city to settle for the amount he wanted, Stefani would have to agree to keep documents relating to the financing of Beatty's home confidential. Stefani believes the reason the city and the mayor were interested in keeping these documents confidential is because the Mayor gave Christine Beatty

\$12,000 to buy her house. Stefani's confidential sources told him the Mayor helped Beatty pick the house out and gifted her money when she was unable to obtain adequate financing through Fifth/Third Bank. Stefani's understanding is that Beatty needed \$24,000 for a down payment, and Fifth/Third Bank gave her (not loaned) \$12,000, with the Mayor giving her the remaining \$12,000. Further, Stefani's sources said that the bank told Beatty the money for a down payment would have to be a gift and not a loan because nobody would believe the mayor gave her a \$12,000 gift. To make it appear legitimate, Beatty should have the Mayor channel the money through her mother. After receiving this information Stefani subpoenaed the mother's account and other information related to the financing of the home. The confidentiality agreement required all of this information turned over.

Stefani believes 5 or 6 of these agreements were executed. He received two copies, each signed by Kilpatrick and Beatty. McCargo took the remaining copies. Stefani knows McCargo did not share copies with Osamuede or Copeland. Stefani did not see Kilpatrick or Beatty receive a copy of the agreement; all he knows is they both signed it. Stefani also made copies purely for the purpose of bringing them to this deposition. Stefani did not even give a copy of this agreement to Brown or Nelthrope although they were aware of its existence and were parties to it. He took the obligation to keep everything confidential very seriously because he did not want to have to pay any money back to the city.

**PUTTING THE SETTLEMENT ON THE RECORD AND THE POST-TRIAL  
VISIT TO JUDGE CALLAHAN'S CHAMBERS**

(159-169)



The settlement was placed on the record with Judge Callahan on December 11, 2007. Present that day were Brown, Nelthrope, Stefani, Osamuede, McCargo, and, possibly, Copeland. William Mitchell III was in the back of the courtroom, but did not participate. Callahan asked Brown, Nelthrope and Stefani to come into the chambers. In chambers, the Judge Callahan asked the officers what their plans were, wished them well in moving on with their lives, and briefly discussed his own children. Stefani believes that Mr. Elrick from the Free Press also requested to speak to the judge in chambers but the Judge told him he would have to wait until he was done speaking with the officers. Stefani is unaware if and when the Judge did speak with Elrick, because neither he nor the officers were present.

**MAYOR'S DESIGNATION OF REPRESENTATIVE TO RECEIVE RECORDS  
UNDER THE AGREEMENT**  
(52-56)

Exhibit 8 is a form in which the Mayor designated William Mitchell III as his representative for handling the documents under the confidentiality agreement.

**TURNING OVER THE CONFIDENTIAL DOCUMENTS AND THE ESCROW  
ACCOUNT**  
(90, 52 – 57, 103-108, 159-165)

The confidentiality agreement required Stefani to turn over all copies of the text messages to an escrow account. Stefani volunteered, during the negotiations, to remove all copies of the text messages from his office's computers. Stefani removed these files from his personal computer and his assistant's computer. No representative of the



Mayor's office came to Stefani's office to scrub his computer or even to check to see if Stefani had done so.

The parties agreed to hold, in escrow, the text messages and records that Brown and Nelthroe wanted kept confidential. These documents had been put in escrow before the agreement was reached, but the escrow agreement provided that, when the matter was fully resolved, approved by the city council, and the money paid, those documents would be released from escrow to the Mayor's designee. Stefani did not yet know Mitchell was to be the Mayor's designee at the time the parties entered the escrow agreement, or even when the parties signed the second settlement agreement, exhibit 5. The escrow agreement is encompassed by exhibits 14 and 15, which relate to the safety deposit box in which the confidential records were placed.

The parties entered into an agreement whereby Stefani and the Mayor's representative both had a key to the safety deposit box, and both keys needed to be present to open the box. When all of the conditions for taking the documents out of the box were met, Stefani sent his son Brady (a lawyer) to the bank in his place. Brady Stefani took his father's key, met Mitchell, and gave him all the records out of the box. When Brady returned to the office, he told his father he had turned everything over to Mitchell. Stefani believes the FedEx envelope, which contained the SkyTel messages, was given to Mitchell. He is not positive that the actual envelope was given to Mitchell, but he knows its contents did.

**THE FREE PRESS FOIA REQUEST**

(12-28, 141-146)

On October 19th, 2007, the Detroit Free Press submitted a request, under the Freedom of Information Act, for "all documents or other information related to the settlements." The City of Detroit said it had no responsive documents, and that the newspaper should submit a request at a later point in time. Schaefer submitted a broader request on November 13, 2007 asking the city to produce "all documents or other information related to the conclusion of the cases," and "any and all documents that the city or its lawyers may consider or have labeled 'confidential.'"

In response the second request, the city, on December 7, 2007, produced just two documents, the Settlement Agreement and General Release.

Regarding the portions of the text messages that the Free Press did obtain and publish, there remains a question about how the Free Press gained access to this information. Stefani denies he or anybody in his office released the information. Stefani claims he has an idea who disclosed the messages to the newspaper, but will not say anything more. He does not want to implicate the person who disclosed the messages because he believes this person did the public a service by revealing wrongdoing by the Mayor.